

**GOVERNMENTAL ADVISORY COMMITTEE
TO THE U.S. REPRESENTATIVE TO THE
NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION**

August 18, 1997

Honorable Carol M. Browner
Administrator
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

Dear Ms. Browner:

Following is the report of the sixth meeting of the Governmental Advisory Committee to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The Committee met July 24 and 25, 1997, at Burlington, Vermont, in conjunction with its counterpart National Advisory Committee.

We enjoyed meeting with the new members of the Committee, and all of us found the meeting to be very productive. We wish to thank U.S. NAFTA Coordinator Serena Wilson and CEC Directors Janine Ferretti and Greg Block for their assistance to the committee. Ms. Wilson, in particular, was helpful in providing guidance to our deliberations that made us more efficient and effective. The Committee also wishes to express its sincere appreciation for the work of Robert Hardaker and his staff in preparing for this meeting. Mr. Hardaker was a wonderful source of information pertinent to our discussions. We highly value his support.

The committee was asked to focus its principal efforts at the meeting and over the coming months in several areas: evaluation of CEC implementation over the past three years, application and revision of Article 14-15 citizen submission guidelines, development of Part V dispute resolution procedures, Article 13 studies, the CEC's role in trade and environment, particularly the NAFTA Effects project; implementation of the Sound Management of Chemicals project, and the role of the Joint Public Advisory Committee (JPAC). Because of the number of new members and the limited time available at the meeting, the committee chose to focus on the issues discussed below, and to defer recommendations concerning other priorities until our next meeting in October. The members expressed their willingness to participate in teleconferences and work groups to maintain continuity and provide for appropriate input between regularly scheduled meetings of the committee.

NAFTA Effects Project

The committee understands that there have been discussions among the governments about the need for continuation of this project. We feel very strongly that the project must continue. Studying and reporting on the linkages of trade and environment is probably the CEC's most important and unique role.

In particular, we urge that the CEC's work on the energy sector continue, specifically focused on the impacts of ongoing utility deregulation. Reiterating recommendations contained in a resolution developed at our last meeting, *the CEC should: play a leadership role in this ground breaking issue; foster communication and cooperation among the three national governments and with appropriate third parties including state and local governments, tribes, nongovernmental organizations, and "green power" generators; and address environmental and health impacts associated with deregulation, assess those impacts trinationally, and develop a market-based strategy which will encourage cleaner sources of energy development and distribution through cooperative purchasing and other innovative strategies.* Consistent with the resolution, we recommend that the CEC first identify and assess likely energy deregulation impacts in the U.S. and the other countries. The committee agreed that the U.S. and the CEC should assure that no downward standards harmonization occurs as a result of deregulation. Although consensus was not reached, the committee discussed at length how voluntary and state "caps" may be affected by deregulation and the desirability of developing approaches to continental harmonization of standards.

With respect to 1998 NAFTA Effects project planning, the committee also urges the U.S. to propose a study of the transportation sector, addressing NAFTA-related impacts of additional trucks and cars on border crossings and the border region, differences in emission standards, transportation of CFCs, linkages between environmental, customs and immigration management; transportation and health linkages, the proposed "NAFTA train", the I-69 highway from Texas to Canada, and the possible intracoastal waterway linking the U.S. and Mexico.

Trade and Environment

The CEC is proving that it is uniquely placed to address continental environmental (especially air and water) and natural resources management issues in the context of a trade agreement. While the CEC is already helping to address national issues that have transboundary implications, providing data and a continental perspective, we believe that the CEC needs to exercise a more proactive role to encourage more common North American approaches on international environmental issues, to assist harmonization of standards and management approaches, to promote increased public awareness of the inter-connections of trade and the environment, and to encourage more environmentally sensitive decision-making by industry and consumers. In particular, the CEC could provide valuable information on the

continental effects of a single nation's decision-making that the national government could choose to incorporate into its processes.

We also recommend that the CEC become a more active participant in other international organizations regarding implementation of multilateral and bilateral agreements, transmitting the North American experience and institutional approaches to larger international fora, and promoting upward harmonization beyond the North American continent. At the same time, we continue to emphasize the importance of assuring early input by state, local and tribal governments, and this committee, in development of the CEC annual work plans.

On the general subject of "Fast Track" authority, the committee commends the NAFTA environmental side agreement implementation accomplishments that have occurred during the past three years, and reiterates the importance of incorporating strong environmental provisions in all future trade agreements.

The committee continues to encourage early scheduling of ministerial level meetings between the trade and environment ministers of the three countries. It is vital that these meetings, proposed by the environmental ministers more than one year ago, occur as soon as possible.

We also urge more active participation by the U.S. Representative with her counterparts in Mexico and Canada. We commend Mexico's commitment to implementation of the NAFTA side agreement, partly reflected in the participation of Julia Carabias, Mexico's environmental minister, at the annual CEC meeting at Pittsburgh, despite the absence of the U.S. and Canadian ministers.

Secretariat Studies under Article 13

With respect to implementation of Article 13 studies, the Committee discussed at some length the example of the proposed study at Sierra Vista, Arizona. Based on its understanding of the situation, the committee views the Secretariat's role in the region and in the issues to be addressed as very constructive, especially in serving as an objective third party and in helping to make information more accessible to communities and governments on both sides of the border. The committee based development of the recommendations on the example of the San Pedro River and the Sierra Vista community, but also believes that the following recommendations should apply generally. The committee recommends that:

a) the Secretariat should notify stakeholders (including state, local and tribal governments and affected communities) early, at least 30 days in advance of a Secretariat decision to proceed with an Article 13 study. In addition, we recommend that these stakeholders be invited to participate with the expert panel in study scoping decisions;

b) The Secretariat's independence from individual national governments is essential with respect to designing and conducting these studies. The Committee explicitly noted that, unlike affected subnational governments, tribes and communities, the Secretariat should not be required to provide formal notification to the national government in advance of a decision to proceed with an Article 13 study. With respect to making information public, the Committee supports independent decision-making by the Secretariat at each stage of the process;

c) Recognizing the value of both Articles 13 and 14 processes, the Committee does not discourage a sequential connection between use of each of the authorities in a similar geographical area and on a related environmental issue. However, the committee also believes that Article 13 studies should not be used to circumvent or terminate appropriate Article 14-15 processes, and that an Article 13 study should be well-detached from a related Article 14-15 process, including detachment from submitters of Article 14-15 allegations;

d) Article 13 reports should always be publicly available, particularly given the committee's recommendations above related to assuring early, significant notification to and involvement of affected subnational governments, tribes and communities in the study. The Committee urges that the Council eliminate or waive current provisions requiring a 60 day embargo and a majority decision by the governments to release the report.

Article 14-15 issues

The committee addressed some of the detailed Article 14-15 issues that were presented, deferring the remainder pending receipt of additional background information.

The committee believes that there should be a limited time for a submitter to withdraw a submission after it is accepted by the CEC, particularly in cases where the CEC has identified a valid issue for further inquiry and where significant CEC and national government resources have been expended. Once a government is asked by the CEC to comment on a submission, the CEC should have discretion to continue the process, even if the submitter declines to pursue it. The committee agreed that a submitter should be permitted to withdraw a submission prior to its acceptance by Secretariat as a "complete" submission, as well as to withdraw at the point that the submitter and the affected government agree that the Article 14 issue has been satisfactorily resolved.

The committee recommends that the CEC maintain a docket of all submissions received and have it available to the governments. In addition, each national government should be notified when any submission is received. Reiterating previous recommendations, the committee also urges that the national government immediately notify any named state, local and tribal governments in its jurisdiction.

North American Fund for Environmental Cooperation

Prior to making recommendations regarding the Fund, the committee asks that information be provided concerning a) whether projects funded to date have accomplished or are accomplishing their objectives; b) whether the projects are seen as adequately supportive of the CEC work program; and c) whether project results are transferrable and are being transferred. In short, is the CEC getting its money's worth?

Operation of the Committee

The committee also reviewed its existing procedures and expressed its preferences for future operations. Members appreciated receiving a significant amount of background reading materials prior to the meeting, and a specific list of issues for advice at the beginning of the meeting. We will appreciate the same level of preparation prior to future meetings. Many of the issues presented to the committee for advice focus on detailed "process" questions. While we are happy to provide assistance on these issues, we also expect to address broad policy issues facing implementation of the Environmental Side Agreement.

The members expressed their desire to attend JPAC and CEC meetings, and to have access to appropriate technical experts and governmental officials to provide additional needed background information related to topics under consideration. The committee also intends to continue to clarify its relationship with the National Advisory Committee, the JPAC, and the national advisory committees of Canada and Mexico. Noting that neither Canada nor Mexico has exercised its authority under Article 18, the committee strongly recommends that the U.S. urge the establishment of governmental advisory committees in the other two countries.

Although the charter calls for two meetings annually, the members feel the committee needs to meet more frequently, i.e., at least three times a year, to address the number and level of detail of issues in our charge. We also ask you to consider providing for two or three year terms for members, rather than the current one year terms.

We appreciate your consideration of these recommendations and await your response.

Sincerely,

Ann Glumac
Chair